

ORIGINAL

the same in the institutional mailbox.  
Houston v. Lack, \_\_\_ US \_\_\_ (1989).

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL LEE,  
Plaintiff,

v.

UNITED STATES, et al,  
Defendants.

1:CV-00-0486

5/9/00  
FILED  
HARRISBURG, PA.

MAY 08 2000

MARVE ANDREA OLER  
Per S/S  
Deputy Clerk

MOTION FOR RECONSIDERATION PURSUANT TO F.R.Cv.P. 59 AND/OR  
PURSUANT TO F.R.Cv.P. 60

Plaintiff Paul Lee ("Lee"), in pro per, moves this Court to  
reconsider its Order entered April 26, 2000:

In its April 26, 2000, Order, this Court dismissed the instant suit  
sua sponte for failing to exhaust administrative remedies under both the  
Federal Tort Claims Act and the Federal Bureau of Prisons' administrative  
remedy procedure. The Court did so without first issuing an Order to  
Show Cause which prevented Lee from providing affirmative evidence on the  
issue.

As shown by the attached exhibits, Lee filed a claim under the Federal  
Tort Claims Act, 28 USC §2671, et seq. The claim was denied on September 9,  
1999, prior to the filing of the instant Complaint. Additionally, Lee filed  
all three required administrative remedies at FBOP Adm. Rem. 192485. The  
final remedy response is also attached hereto.

Therefore, with all due respect, the Court's decision was hastily made  
without the benefit of input from the Plaintiff. In light of the evidence  
as attached hereto, it is clear that the decision was factually erroneous.

Lee further advises the Court that once reconsideration is granted  
and this suit reinstated, he will file an Amended Complaint which will address  
the issues in a more clear and detailed manner. The imminent Amended  
Complaint will also allege the exhaustion of remedies. Lee, of course, needs  
not obtain authorization prior to filing his Amended Complaint, F.R.Cv.P.  
15(a), and will do so within twenty (20) days of the anticipated reinstatement.

WHEREFORE, Plaintiff Paul Lee respectfully requests that the suit be  
reinstated.

Respectfully submitted,

By: 

Paul Lee, in pro per  
Box 2000 01656.087  
White Deer, PA 17887  
1.800.278.3288 Telephone  
1.800.572.4403 Facsimile

PLAINTIFF

Administrative Remedy No. 192485-A1  
Part B - Response

This is the response to your Central Office Administrative Remedy Appeal in which you allege the medical care and treatment you are receiving for your hip pain is not appropriate. You also disagree with the need to carry a cane to alleviate your pain.

Discussion with FCI Allenwood medical staff indicates you have been diagnosed with having degenerative arthritis of the left hip. The Clinical Director has determined you are not a candidate for a hip replacement, but have been offered a non-steroidal anti-inflammatory drugs (NSAID) to ease your pain. You have refused the use of a cane and non-steroidal anti-inflammatory drugs. You state the injection given at a prior institution resulted in increased hip pain. NSAID injections are considered standard treatment to decrease pain associated with degenerative arthritis. Should you wish to reconsider receiving treatment, you should make your needs known by utilizing normal sick call procedures. The record reflects Health Services staff have provided you medical care and treatment in accordance with Bureau policy.

Accordingly, we concur with the findings and decisions of the Warden and Regional Director that the medical care and treatment you have received is appropriate. Your Central Office Administrative Remedy Appeal is denied.

Date Jan. 6, 2000

H. J. Stewart  
 H. J. Stewart, Administrator  
 National Inmate Appeals



U.S. Department of Justice  
 Federal Bureau of Prisons

Federal Correctional Institution, Beckley  
 P. O. Box 1280  
 Beaver, West Virginia 25813  
 Telephone: (304) 335-9238

CERTIFIED

September 9, 1999

Paul Lee

Reg. No. 01656-087

FCI Allenwood

P.O. Box 2500

White Deer, PA 17887

Re: Administrative Tort Claim Number T-MXR-99-357

Dear Mr. Lee:

Your claim has been considered for administrative settlement under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et. seq.*, and authority granted under 28 C.F.R. § 0.172. Your claim government liability in the amount of \$2,500,000.00 for personal injury. Specifically, you claim that on July 14, 1997, while housed at FCI Beckley, you were forced to sleep on a hard metal steel bed which caused bursitis and arthritis in your hip.

While at FCI Beckley you were provided a mattresses to sleep on. There is no evidence that your degenerative arthritis and bursitis are attributed to sleeping on a hard metal surface, as you allege. As no act or omission of a Government employee was a factor in your injury, your claim is denied. This letter is a final denial of your claim. If you are not satisfied with the determination, you have six months from the date of the mailing of this notification to bring suit in an appropriate United States District Court, should you wish to do so.

Sincerely,

H. J. Stewart  
 Bill Burlington  
 Regional Counsel

LAST NAME, FIRST, MIDDLE INITIAL

RECEIVED SEPTEMBER 14, 1999